

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of: PARENTS ON BEHALF OF STUDENT, v. SAN MATEO-FOSTER CITY SCHOOL DISTRICT,	OAH CASE NO. 2013110232
SAN MATEO-FOSTER CITY SCHOOL DISTRICT, v. PARENTS ON BEHALF OF STUDENT.	OAH CASE NO. 2013120613 ORDER GRANTING DISTRICT'S MOTION TO CONSOLIDATE

On November 26, 2013, Parents on behalf of Student (collectively referred to here as Student) filed an Amended Request for Due Process Hearing (complaint) in Office of Administrative hearings (OAH) case number 2013110232 (First Case), naming the San Mateo-Foster City School District (District).

On December 17, 2013, the District filed a complaint in OAH case number 2013120613 (Second Case), naming Student. On that same date, the District filed a motion to consolidate its case with that of Student.

Student has not filed an opposition or any response to the District's motion to consolidate.

Consolidation

Although no statute or regulation specifically provides a standard to be applied in deciding a motion to consolidate special education cases, OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Student's amended complaint alleges that the District denied him a free appropriate public education for the following reasons: (1) failing to find him eligible for special education and related services in November, 2011;(2) failing to adequately assess him in all areas of suspected disability; (3) failing to provide all of his educational records to his parents; (4) failing to hold a manifestation determination before excluding him from school; and (5) failing to provide prior written notice and notice of procedural safeguards to his parents. Student's issue six alleges that his private placement is appropriate.¹

The District's complaint alleges that it sought to re-assess Student in order to determine his present unique needs. The District alleges that it sent an assessment plan to Student's parents, but they have not consented to the assessment. The District seeks an order permitting it to assess Student.

The District's motion to consolidate contends that the two cases should be consolidated because they involve a common thread of fact and law. The District states that the cases will involve the same witnesses and documentary evidence since both cases involved the assessment of Student. Student has not filed any responsive pleading to contest the District's reasons that consolidation is warranted in this case.

Since the two cases involve the common issues of assessments relating to Student, and will involve overlapping witnesses and documents, consolidation in this case is appropriate. In addition, consolidation furthers the interests of judicial economy in not having two hearings where the same witnesses will testify and the same documents presented. Accordingly, the District's motion to consolidate is granted.

ORDER

1. The District's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2013120613 (Second Case) are vacated.
3. This consolidated matter will proceed on the dates presently set in OAH Case Number 2013110232 (First Case). The prehearing conference is scheduled for January 10, 2014, at 1:00 p.m. The due process hearing is scheduled for January 22, 2014.

¹ On December 9, 2013, OAH dismissed issues seven, eight, and nine of Student's complaint because the issues were not within the jurisdiction of OAH.

4. The 45-day timeline for issuance of the decision in the consolidated cases shall be based on the date of the filing of the complaint in OAH Case Number 2013110232 (First Case).

Dated: December 24, 2013

/s/

DARRELL LEPKOWSKY
Administrative Law Judge
Office of Administrative Hearings